

MONTANA LEGISLATIVE HISTORY

Chapter 238 19 91

Bill H 347 S _____ Original bill & history ☒ c

H. Committee on Ed. & Cult. Res.

S. Committee on Ed. & Cult. Res.

Hearing Date(s) _____ c

Hearing Date(s) _____ c

2/1 ☒ c

3/11 _____ c

_____ c

_____ c

_____ c

_____ c

Date Out 2/5 ☒ c

3/13 ☒

Did this bill originate in an interim committee? _____ Yes _____ No

Committee _____

Report _____

HOUSE BILL NO. 347

INTRODUCED BY GERVAIS, GAGE, SVRCEK
BY REQUEST OF THE COMMITTEE ON INDIAN AFFAIRS

IN THE HOUSE

JANUARY 22, 1991	INTRODUCED AND REFERRED TO COMMITTEE ON EDUCATION & CULTURAL RESOURCES.
JANUARY 23, 1991	FIRST READING.
FEBRUARY 5, 1991	COMMITTEE RECOMMEND BILL DO PASS AS AMENDED. REPORT ADOPTED.
FEBRUARY 6, 1991	PRINTING REPORT.
FEBRUARY 7, 1991	SECOND READING, DO PASS.
FEBRUARY 8, 1991	ENGROSSING REPORT.
FEBRUARY 9, 1991	THIRD READING, PASSED. AYES, 84; NOES, 9.
	TRANSMITTED TO SENATE.

IN THE SENATE

FEBRUARY 11, 1991	INTRODUCED AND REFERRED TO COMMITTEE ON EDUCATION & CULTURAL RESOURCES.
	FIRST READING.
MARCH 14, 1991	COMMITTEE RECOMMEND BILL BE CONCURRED IN. REPORT ADOPTED.
MARCH 16, 1991	SECOND READING, CONCURRED IN.
MARCH 18, 1991	THIRD READING, CONCURRED IN. AYES, 48; NOES, 1.
	RETURNED TO HOUSE.

IN THE HOUSE

MARCH 19, 1991	RECEIVED FROM SENATE.
	SENT TO ENROLLING.
	REPORTED CORRECTLY ENROLLED.

1 House BILL NO. 347
2 INTRODUCED BY Lawrence D. Hulse
3 BY REQUEST OF THE COMMITTEE ON INDIAN AFFAIRS
4
5 A BILL FOR AN ACT ENTITLED: "AN ACT REVISING THE NEPOTISM
6 LAW TO AUTHORIZE SCHOOL DISTRICT TRUSTEES TO APPOINT A
7 TRUSTEE'S RELATIVE; AMENDING SECTION 2-2-302, MCA; AND
8 PROVIDING AN IMMEDIATE EFFECTIVE DATE."
9
10 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:
11 **Section 1.** Section 2-2-302, MCA, is amended to read:
12 "2-2-302. Appointment of relative to office of trust or
13 emolument unlawful -- exceptions -- publication of notice.
14 (1) ~~It shall be~~ Except as provided in subsection (2), it is
15 unlawful for any person or any member of any board, bureau,
16 or commission or employee at the head of any department of
17 this state or any political subdivision thereof to appoint
18 to any position of trust or emolument any person related or
19 connected by consanguinity within the fourth degree or by
20 affinity within the second degree.
21 (2) The provisions of this section and 2-2-303 do not
22 apply to:
23 (a) sheriffs in the appointment of persons as cooks
24 and/or or attendants;
25 (b) school district trustees if at least two-thirds of

1 the trustees approve the appointment of a person related to
2 a trustee; and
3 (b)(c) the renewal of an employment contract of a
4 person who was initially hired before the member of the
5 board, bureau, or commission or the department head to whom
6 he is related assumed the duties of the office.
7 (3) Prior to the appointment of a person referred to in
8 subsection (2), the school district trustees shall give
9 written notice of the time and place of their intended
10 action. The notice must be published at least 15 days prior
11 to the trustees' intended action in a newspaper of general
12 circulation in the county in which the school district is
13 located."
14 **NEW SECTION. Section 2.** Effective date. (This act) is
15 effective on passage and approval.

-End-

administration of schools. Supt. Lamb answered yes. REP. HARRINGTON asked why the administrators feel they alone should decide what is a professional day for teachers. Supt. Lamb said they are not saying a teacher cannot go to the state teacher's convention but are saying let the districts have the option. With new accreditation standards, there will be a tremendous need for in-service training and professional development for that specific district. That particular district's needs can best be addressed by that district.

REP. ELLIS asked Mary Sheehy Moe if the teachers can chose to stay individually. She answered the district has to have provided some sort of professional development for those that do stay. This has resulted in a number of districts holding mini-conventions.

Closing by Sponsor:

REP. GOULD presented EXHIBIT 5 and said, although Eric Feaver has done an excellent job in turning around the MEA, he resorted to blackmail and pressure. He said he doesn't like any type of blackmail and this is about the most blatant blackmail he has seen.

HEARING ON HB 347

Presentation and Opening Statement by Sponsor:

REPRESENTATIVE BOB GERVAIS, House District 9, Browning, said HB 347 would revise the nepotism law to authorize school district trustees to appoint a relative as trustee. REP. GERVAIS also presented amendments. EXHIBIT 6 This bill was introduced by the Indian Affairs Committee and it doesn't cost any money. The reservations have difficulty in getting good people on the school boards due to present law. These are the people who are the most active in the community and probably the most concerned.

Proponents' Testimony:

Chip Erdmann, Montana Rural Education Association and also individual school districts across Montana, presented written testimony from these districts. EXHIBITS 7,8,9 In a number of small districts in Montana and particularly those districts on or near Indian Reservations there is real difficulty when dealing with family relationships. There are very extended families on the reservations that don't tend to move far from home and a number of people living in the community are related. The school districts are often the largest employer with many qualified people wanting to work for the school district who cannot do so. The last meeting of the Rural Education Association endorsed this bill and representatives from small districts said it is difficult in isolated areas of Montana to even hire a clerk who is not related to somebody on the school board. This bill is a

major response to the problem throughout rural Montana, particularly on Indian Reservations.

Kay McKenna, Montana Association of County School Superintendents, (MACSS), said this bill has safeguards. With all trustees having to vote, noticing ahead of time, and the trustee affected not being able to vote, any dynasty building would be safeguarded against.

Bruce Moerer, Montana School Boards Association, (MSBA), supports this bill with safeguards built in by the amendment.

Raymond "Jake" Parker, Jr., Board of Trustees, District 87-J presented written testimony. EXHIBIT 10

REP. BOB BACHINI stated support saying he is aware of the problems since one of the school districts is in his area.

Richard Hughes, Superintendent, Box Elder, said the five trustees of the Box Elder District have specifically asked him to represent them in this matter of extreme importance. The School Boards of both Box Elder and Rocky Boy have cooperatively worked toward introduction of new legislation which would amend the present legal requirements. The current law is to the detriment of the efficient operation of the school districts. The quality of instruction offered is no better than the quality of the employees. In the business of providing direction and guidance to young people one soon learns the support people such as the bus drivers, custodians and instruction aids have as great an impact on the students as anyone. It doesn't take long to see that as far as board members go at election time the cream comes to the top. These people are the best the community has to offer and the most prominent as recognized by the voters. The ones most able to gain support for the school and, yes, many times their relatives are of the same caliber...the ones to count on to get the job done. It is unfair and impractical to not take advantage of this resource pool. HB 347 would go a long way towards the smooth operation of many school districts and indirectly improve the program of instruction received by students.

Ivan Small, Acting Superintendent, School District 9, President, Indian Impact Schools of Montana, said both organizations support HB 347 as amended. The Browning Public Schools have a student population of 96% Native American and are striving to hire qualified personnel who are aware of issues confronting the students of the seven Indian Reservations and rural Montana.

Bum Stiffarm, Director of Tribal Education Programs of the Gros Ventre and Assiniboine Tribes, Fort Belknap, submitted written testimony. EXHIBIT 11

Opponents' Testimony: None

Questions From Committee Members:

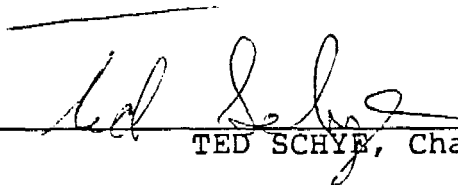
REP. WALLIN asked Ivan Small if there would be a problem with the appointment of the superintendent by a relative and would it be appropriate to amend the bill exempting the position of superintendent. Ivan Small said this would not really create a problem since it takes 100% of the existing board to vote for the superintendent. It would only take 2/3 vote, or a majority, to get rid of him/her.

Closing by Sponsor:

REP. GERVAIS said to remember this is for the children, to get and retain the best people possible on the boards to serve these children.

ADJOURNMENT

Adjournment: 5:30 p.m.



TED SCHYE, Chair



DIANNE MCKITTRICK, Secretary

TS/dMcK

HOUSE OF REPRESENTATIVES

EDUCATION AND CULTURAL RESOURCES COMMITTEE

ROLL CALL

DATE 2-1-91

NAME	PRESENT	ABSENT	EXCUSED
REP. TED SCHYE, CHAIRMAN	✓		
REP. ERVIN DAVIS, VICE-CHAIRMAN	✓		
REP. STEVE BENEDICT	✓		
REP. ERNEST BERGSAGEL	✓		
REP. ROBERT CLARK	✓		
REP. VICKI COCCHIARELLA	✓		
REP. FRED "FRITZ" DAILY	✓		
REP. ALVIN ELLIS, JR.	✓		
REP. GARY FELAND	✓		
REP. GARY FORRESTER	✓		
REP. FLOYD "BOB" GERVAIS	✓		
REP. H.S. "SONNY" HANSON	✓		
REP. DAN HARRINGTON	✓		
REP. TOM KILPATRICK	✓		
REP. BEA MCCARTHY	✓		
REP. SCOTT MCCULLOCH	✓		
REP. RICHARD SIMPKINS	✓		
REP. BARRY "SPOOK" STANG	✓		
REP. NORM WALLIN	✓		
REP. DIANA WYATT	✓		

Amendments to HB Bill No. 347
1st Reading Copy

EXHIBIT #6
DATE 2-1-91
HB 347

Requested by Rep. Gervais
For the House Committee on Education

Prepared by Andrea Merrill
January 28, 1991

1. Page 1, line 25.

Strike: "at least two-thirds"

Insert: "all"

2. Page 2, line 1.

Following: "trustees"

Insert: "present, with the exception of any trustee who is
related to the person being appointed and who must abstain
from voting for the appointment,"

OFFICE OF
GLACIER COUNTY ATTORNEY

14 EAST MAIN STREET
P. O. BOX 428
CUT BANK, MONTANA 59427

PHONE: 406-873-2278

JAMES C. NELSON
COUNTY ATTORNEY

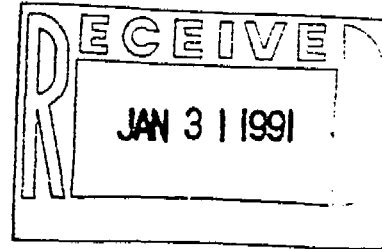
LARRY D. EPSTEIN
DEPUTY COUNTY ATTORNEY

#7
EXHIBIT
DATE 2-1-91
HB 347

FAX: 406-873-2643

January 30, 1991

Rep. Ted Schye, Chairman
House Education & Cultural
Resources Committee
Capitol Station
Helena, MT 59620



In Re: House Bill-347

Dear Chairman Schye and
Members of the Committee:

I am writing this letter in support of HB-347. I would have preferred to testify personally at the hearing on the bill Friday, February 1st, but a conflict prohibits me from coming to Helena.

I have served as the County Attorney for Glacier County, Montana, for the past twelve years. As you know, the Blackfeet Indian Reservation is located almost entirely within Glacier County. School District No. 9 takes in most of the Reservation. There are three other school districts in Glacier County, two on the reservation and one off the reservation.

During my years as County Attorney, I have been faced with numerous allegations of nepotism involving Glacier County school district boards and, in particular, the Browning School District. Generally, school districts within the County have had problems with or questions about the nepotism laws at least annually. Those in School District No. 9 seem to be the most severe and most reoccurring, however. During the year 1989 and in the early part of 1990, for example, violations of the nepotism laws became so rampant in the Browning School District that four of the six trustees resigned following the issuance of an Attorney General's Opinion (43 AGO 23 (1989)) which held that the nepotism laws apply to school districts located within Indian reservations.

I do not believe that the affected trustees had any intention of violating the law -- most had faithfully served the District for a number of terms and had been re-elected by the community even though various relatives of the trustees were employed by the District. Nevertheless, they were caught between a rock and a hard place, and as a result the District lost some experienced, hard working people on the Board.

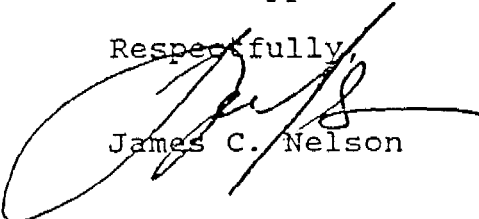
EXHIBIT #7
DATE 2-1-91
HB 347

Page Two
January 30, 1991

I am bringing these matters to your attention, not to criticize School District No. 9, but to emphasize the point that nepotism is a serious problem in rural school districts in general and in Indian reservation school districts in particular. Indian communities are homogeneous and family relationships tend to predominate even more than in non-Indian communities. It is often difficult, if sometimes not impossible, to find qualified people to run for school boards from rural communities and from Indian communities because candidates know that employment opportunities for their relatives -- which are already scarce -- may be even more limited by the nepotism statutes if the office seeker is elected. To make matters worse, the school district is likely one of the largest employers in small communities and on Indian reservations, and the school board is comprised of a greater number of elected officials than are other public bodies.

HB-347, as amended, represents a reasonable and well thought out approach to solve this problem. I urge your favorable consideration of HB-347, and request that this letter be included in the record in support of the bill.

Respectfully,



James C. Nelson

JCN:mjp

cc: Charles E. Erdmann
Sen. Del Gage
Rep. Bob Gervais

BLACKFEET NATION

EXHIBIT # 8
DATE 2-1-91
HB 347 TRIBAL COUNCIL

EXECUTIVE COMMITTEE

TOM WHITFORD, SR., CHAIRMAN
BERNARD ST. GODDARD, VICE-CHAIRMAN
MARVIN WEATHERWAX, SECRETARY
LELAND GROUND, TREASURER

P. O. BOX 850
BROWNING, MONTANA 59417
(406) 338-7179

TOM WHITFORD, SR.
BERNARD ST. GODDARD
MARVIN WEATHERWAX
LELAND GROUND
CHARLES DEROCHE
ROGER SASSY RUNNING CRANE
LLOYD H. CURLY REEVIS
DARRYL GORDON HORN
DONALD P. LITTLE DOG

June 6, 1989

Mr. Marc Racicot, Attorney General
State of Montana
Department of Justice
215 North Sanders
Helena, MT 59620

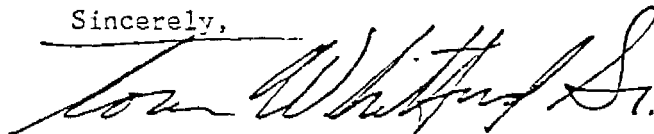
Dear Mr Racicot:

We feel that the Nepotism Law, as it pertains to the School District in Browning, Montana, could impose a hardship on the community.

The School District is the largest employer on the Reservation of both professional and supportive personnel. When one considers the relatively small population base and the economic conditions of our community, it becomes apparent that Board Members will run afoul of the current law.

We have confidence in the elected officials of the Board of Trustees and feel that the community would not continue to elect those Board Members that they felt were abusing their position.

Sincerely,



TOM WHITFORD, SR., Chairman
Blackfeet Tribal Business Council

TW/bl:hlg

cc: Chrono File

EXHIBIT

#9

DATE 2-1-91

HB 347

HARLEM PUBLIC SCHOOLS

SCHOOL DISTRICT NO. 12

Junior-Senior High
P.O. Box 339

Elementary
P.O. Box 309

Harlem, Montana 59526

Date: February 1, 1991

From: Donald A. Wetzel
Superintendent School District #12

To: Legislative Hearing Committee H. B. 347

The School trustees of District #12 support representative Gervais and H. B. 347. Revising the nepotism law to authorize school district trustees to appoint a relative to a position is a key element throughout Indian country. Not only does this affect native americans but all urban schools have difficulty with the nepotism law as it is written.

In many cases, as is the case for school district #12, a Native American Board member may have over 100 to 200 hundred relatives who would fall under the current nepotism laws. With unemployment running 50 - 70% on our reservations why compound the problem with the current nepotism laws. Again with high unemployment under the current system Native American businesses cannot get work in the District if a relative is a board member.

We must consider the human element, the need for work to address our unemployment situations in Indian Country. Being able to work and have jobs is a key to many things. When the head of the family is working family unity is improved. Self-esteem and self-worth rises and the threat of drug and alcohol problems decrease.

Let's not compound our problem, support H.B. 347.

EXHIBIT #10
DATE 2-1-91
HB 347

PUBLIC TESTIMONY
IN SUPPORT OF H.B. 347

PRESENTED TO:
Montana House of Representatives
House Education Committee
February 1, 1991 - 3:00 p.m.
State Capitol
Helena, Montana

PRESENTED BY:
Raymond "Jake" Parker, Jr.
Board of Trustees
School District 87-J
Rocky Boy Elementary School - P.O. Box 620
Box Elder, Montana 59521
(406) 395-4291

Good afternoon Mr. Chairman and members of the Montana House of Representative Education Committee. I am here today with Dr. Robert J. Swan, Rocky Boys Schools Federal Projects Coordinator, to testify on House Bill Number 347 that will exempt School Districts from the Nepotism Law.

My name is Raymond "Jake" Parker, Jr. and I am a member of the Board of Trustees for School District 87-J, Rocky Boy Elementary School. I am also a school board member for the Rocky Boy High School, a BIA Grant School that will become a public high school on July 1, 1991. Finally, I am a tribal councilman and serve on the Chippewa Cree Business Committee.

First, I would like to thank Representative Gervais and others for introducing this needed legislation. This legislation is greatly needed in rural areas and on Indian Reservations.

The current law states:

"...it is unlawful for any person or any member of any board, bureau, or commission or employee at the head of any department of this state or any political subdivision thereof to appoint to any position of trust or emolument any person related or connected by consanguinity within the fourth degree or by affinity within the second degree."

As many of you are aware, the unemployment rate on Indian reservations have varied from 35% to 75% during the past (10) years. For many of our people, to secure gainful employment is of utmost importance, even if the position is a custodian, bus driver or teacher assistant.

The Rocky Boy Schools is the major employer on the Rocky Boy Reservation. Between the elementary and high school, we employee

EXHIBIT #10
DATE 2-1-91
HB 347

nearly 100 personnel which includes classified employees such as janitors, secretaries, clerks, bus drivers, cooks to certified school personnel such as teachers, principals and the superintendent of schools.

Because we are a small rural community, we are faced with the current Nepotism Law at almost every monthly meeting because our classified employee turnover rate is high and we are limited when it comes to contractors on the reservation. For example, we have only one certified electrician, two qualified masons, and two qualified heavy equipment contractors. If one of the contractors is related to a board member, we must hire contractors as far away as Billings and Great Falls. Contractors from a long distance from Rocky Boy not only charge a higher rate, but mileage and per diem is also charged.

Another problem we encounter every month is hiring substitute teachers, temporary cooks, teacher aides and bus drivers. For bus drivers, this is extremely difficult because we have very few qualified bus drivers. Because of this problem, we often must have our transportation supervisor, home school coordinator and in some cases, teachers drive bus when two regular bus drivers are on sick leave.

We currently have few teachers of Chippewa-Cree descent working for the Rocky Boy Schools even though the demand for Indian teachers is very high. We are lucky to have two teacher training programs at Stone Child College that works in cooperation with Northern Montana College, Eastern Montana College and Montana State

University. Sometimes in the near future these potential teachers will want to return to Rocky Boy to teach; however, if they are related to a school board member they will not be able to teach in their own community. This is not an unique problem to Rocky Boy or on Indian reservation, but a problem to all rural communities. A teacher from a rural community often wants to return to their "roots" and in many cases, the current Nepotism Law prevents this.

The proposed new section of Section 2-2-302 is being proposed to read as follows:

"(b)school district trustees if at least two - thirds of the trustees approve the appointment of a person related to a trustee;"

The Board of Trustees for School District 87-J supports this amendment. However, it is our understanding that the Browning School Board recently voted to support the bill only if the bill is amended to provide that the vote be unanimous when hiring a relative of a board member and that the board member involved must abstain from the voting. We concur with this proposed change and are recommending that "at least two-thirds of the trustees" be changed to:

(b) school district trustees if the trustees unanimously approve the appointment of a person related to a trustee and the trustee(s) related to the appointee abstain from voting;

Regarding the second change requiring a 15 day public notice, we have no problem with this change. However, it could pose a problem if a vacant position must be filled immediately. I would recommend that the public notice be left in. However, the Board of Trustees should be allowed to fill the position on a temporary

EXHIBIT #10
DATE 2-1-91
HB 347

basis, if needed. If the public does not question the Board of Trustees' appointment, the person appointed to the position should be able to assume the position after the 15 days has expired.

Mr. Chairman, Dr. Swan or myself will be more than willing to answer any of yours or Committee members questions.

In behalf of School District 87-J Board of Trustees, I would like to thank you very much for allowing me to speak in behalf of H.B. 347.

Respectfully Submitted: Raymond Jake Parker Jr 2-1-91
Raymond "Jake" Parker, Jr. Date

EXHIBIT #11
DATE 2-1-91
HB 347

Good afternoon Mr. Chairman and distinguished members of this committee. My name is Bum Stiffarm. I am the Director of Tribal Education Programs of the Gros Ventre and Assiniboine Tribes of Fort Belknap and am currently the President of the Montana Indian Education Association and 1st Vice-President of the National Indian Education Association.

I am before you today to speak on behalf of House Bill No. 347. This bill if passed would greatly enhance the educational efforts and achievements of Indian people in the State of Montana.

You have heard some excellent testimony today explaining the positive impact this bill would have on our Indian school districts. If you can bear with me for just a few moments please let me provide you with some insight on why this bill is so desperately needed for the students, parents and community members that live in these districts.

One of the leading factors in the success of students in their educational process is role models that students can identify with. People they can look up to. It is very important that Indian children just as well as Non-Indian children see teachers in the front of the classroom of their own kind. It is just as important to see Indian principals and superintendents in administrative positions in these schools. This builds the self esteem of the student and gives them the feeling that 'hey I can be one of these people one day too'.

We as Indian people are always telling our students who go on to college and become teachers to come back home and teach our children and help them make a better life for themselves. Show them that it

EXHIBIT #11
DATE 2-1-91
HB 347

can be done. We have many excellent Indian teachers in school districts across the state.

On the national level and within our state one of the most vital ingredients in the success of any student is parental involvement in a child's educational future. The parent plays a very important role in the development of the child's learning process. Traditions and lore have taught us that education is paramount in the Sacred Circle of Life in which we truly believe.

Unfortunately, as the current law exists it ties the parents hands and robs the students of motivational factors for educational success.

Indian people will not run for school district trustee positions as they know quite well that their brother, sister or relative cannot teach or serve as an administrator of that district. I am an example of the law as it exists. I wanted to run for a position on the school board in Harlem. As I filed for election the school administration informed me that my cousin would have to leave his job if I was elected to the board. How could I jeopardize his livelihood. The choice was simple. I was not going to get paid for the board seat and he had to feed his family. What would you choose? This is only my example. You have heard familiar stories that are very true of many Indian school districts across this state.

The stories of Browning and Rocky Boy are very true. In this state for the year 1989-90, the Office of Public Instruction reports that in 16 school districts, Indian students compose 95-100% of the student population. In 13 other districts Indian students compose 50-75% of

EXHIBIT #11
DATE 2-1-91
HB 347

the school population. In 20 other districts Indian students compose 25-50% of the student population. (Office of Public Instruction Report, January 1990)

This only demonstrates the high number of Indian students in these schools that so desperately need role models as teachers and administrators. But if our Indian population is so high then too we have a large number of Indian parents that want to serve on the school boards that govern the districts. On each reservation there are many, many qualified Indian people who would do an excellent job as school board trustees. The only problem is THEY CAN'T. As the current law stands THEY CAN'T.

Let us have the opportunity to run in a free election for positions on any school board within any district. The bill before you as drafted still protects the district any form of favoritism that could possibly exist. Our schools and people are professional enough not to run rampant with these new and expanded possibilities. Who knows we may even set an example for the rest of the country to follow.

The Fort Belknap Community Council and Montana Indian Education Association stand firmly in support of this bill as presented. Please give us your support on this very important issue.

Thank you.

Questions From Committee Members:

REP. GERVAIS asked REP. CODY if this law includes smoke-less tobacco. She replied no.

Closing by Sponsor:

REP. CODY said the bill addresses employees, not students, and is very specific in the law already....seven employees not seven students.

EXECUTIVE ACTION ON HB 125

Motion/Vote: REP. STANG moved HB 125 DO PASS. Motion CARRIED unanimously.

EXECUTIVE ACTION ON HB 347

Motion: REP. KILPATRICK moved HB 347 DO PASS.

Motion/Vote: REP. STANG moved to amend to HB 347. EXHIBIT 2 REP. SIMPKINS felt it necessary to delete the word "present". Upon discussion between Andrea Merrill and REP. GERVAIS it was agreed to do so. REP. STANG made a substitute motion to adopt amendments in Exhibit 2 and REP. SIMPKINS' amendment to HB 347. Motion CARRIED unanimously.

Vote: REP. COCCHIARELLA moved HB 347 DO PASS AS AMENDED. Motion CARRIED unanimously.

EXECUTIVE ACTION ON 363

Motion: REP. BENEDICT moved HB 363 DO PASS.

Motion: REP. HARRINGTON made a substitute motion hb 363 DO NOT PASS. REP. HARRINGTON said this appears to be nothing but a turf battle between the administrators. These two days are very important professional days. If this bill passes, many schools will cancel the professional days altogether. These days are set aside for professional education and should remain as such. This is contrary legislation at its best. REP. MCCARTHY agreed. If this were to pass teachers could sit and knit in the classroom for six hours and still get paid. REP. ELLIS said it is his understanding most teachers have alternative programs they can attend such as mathematics workshops etc.

Motion/Vote: REP. WYATT made a substitute motion that HB 363 BE TABLED. Motion CARRIED 18 to 1. EXHIBIT 3

HOUSE OF REPRESENTATIVES

EDUCATION AND CULTURAL RESOURCES COMMITTEE

ROLL CALL

DATE 2-4-91

NAME	PRESENT	ABSENT	EXCUSED
REP. TED SCHYE, CHAIRMAN	✓		
REP. ERVIN DAVIS, VICE-CHAIRMAN	✓		
REP. STEVE BENEDICT	✓		
REP. ERNEST BERGSAGEL	✓		
REP. ROBERT CLARK	✓		
REP. VICKI COCCHIARELLA	✓		
REP. FRED "FRITZ" DAILY	✓		
REP. ALVIN ELLIS, JR.	✓		
REP. GARY FELAND	✓		
REP. GARY FORRESTER			✓
REP. FLOYD "BOB" GERVAIS	✓		
REP. H.S. "SONNY" HANSON	✓		
REP. DAN HARRINGTON	✓		
REP. TOM KILPATRICK	✓		
REP. BEA MCCARTHY	✓		
REP. SCOTT MCCULLOCH	✓		
REP. RICHARD SIMPKINS	✓		
REP. BARRY "SPOOK" STANG	✓		
REP. NORM WALLIN	✓		
REP. DIANA WYATT	✓		

HOUSE STANDING COMMITTEE REPORT

February 4, 1991

Page 1 of 1

Mr. Speaker: We, the committee on Education and Cultural Resources report that House Bill 347 (first reading copy -- white) do pass as amended .

Signed: _____
Ted Schye, Chairman

And, that such amendments read:

1. Page 1, line 25.

Strike: "at least two-thirds of"

Insert: "all"

2. Page 2, line 1.

Following: "trustees"

Insert: ", with the exception of any trustee who is related to the person being appointed and who must abstain from voting for the appointment,"

come to the Legislature and asked for repeal of statute but they didn't. Several opportunities in past sessions to change the law. Thinks if they had not liked this (since 1983), they could have changed it by now. It could have been done but they refused. As far as waiting for March--she doubts actions will be taken at that time.

SENATOR WATERMAN asked if Representative Cody had considered changing the law when bill was considered?

Representative Cody said that she had not. The subcommittee did consider coming up with a committee bill but they could not agree on what needed to be done.

SENATOR WATERMAN said that she thought the reason they don't introduce the bill is because they believe that they have the authority to establish the rule; should be done within the budgets allowed.

Closing by Sponsor:

REPRESENTATIVE CODY closed the hearing saying that the Attorney-General's opinion states that (re: the area of gifted and talented children) the Board of Education is restricted to the adoption of policies under 20-2-121. She was specific that the legislature's choice was not to mandate but to let the Board establish a policy so that OPI could fund programs for gifted and talented children. She urged the committee not to wait until March meeting for decision.

HEARING ON HB 347

Presentation and Opening Statement by Sponsor:

REPRESENTATIVE GERVAIS, House District 9, presented HB 347 which would exempt school districts from nepotism laws.

The bill has been amended to where the relative on the Board would not vote with 100 percent of the other board members voting.

Proponents' Testimony:

STEVE BROWN representing the Indian Impact Schools.

The bill addresses a problem for school districts on reservations and in rural areas of Montana. The bill as originally submitted to legislative council was intended to target reservation area schools but in preparing that legislation, the legislative council advised that there might be some constitutional problems with limiting the scope of the bill so it was decided to take the approach taken in HB 347.

Important fact that in most Indian cultures, the extended family

is important, definite part of their culture. As a result, the existing nepotism laws create severe problems in small rural schools.

It is obvious that the intent of the present law is to prevent someone from being hired solely on the basis of relationship with a member of school board but it might also keep a qualified relative from being considered for employment in the school district; discourage and limit others. On Indian reservations where the majority of the population is Indian, those people might be reluctant to run for school board positions and thus the school board might be made up of non-Indian people.

Speaker said the recent Attorney-General's opinion re: nepotism law applies to appointments for new positions. Exhibit 2

Protection built into bill as follows:

- (1) Fifteen days notice before any relative could be hired; Notice must include newspaper advertisement of intended action.
- (2) Effected trustee cannot vote to hire relatives to teaching positions.
- (3) There must be a unanimous vote from all remaining trustees to hire the relative.

Other proponents:

CHIP ERDMAN, MT Rural Education Association

This situation found in many rural areas. Position sometimes called "an acting" position to get around the law. Speaker feels this is not a right way to deal with the law. In other areas, it was found that the nepotism statute was ignored because there was no choice. Some places a clerk couldn't be hired because everyone was related. He said that MREA supports this bill; thinks it takes care of problem in a reasonable fashion.

RAYMOND "JAKE" PARKER, JR., Member of Board of Trustees for School District 87J and Rocky Boy High School; Tribal councilman on Chippewa Cree Business Committee. Exhibit 3.

Speaker states that Rocky Boy School District is major employer of reservation; Unemployment among Indian population as high as 75 percent. About 100 people employed through school system. He said that on reservation, they are faced with the nepotism law monthly because of problems encountered in filling jobs. High demand for Indian teachers but those training cannot return to teach in their own communities because of this law. Problem not unique to Indian reservations but all rural communities.

Other proponents:

DICK HUGHES, Superintendent, Box Elder Schools
KAY MCKENNA, County Superintendent of Schools

Questions from the committee:

SENATOR PINSONEAULT asked the procedure for initiating an audit. Chip Erdman said that there is no provision right now for what Senator was describing. He said that he thought Chairman Blaylock could answer question because of his dealings with Pryor School District. School districts must have biannual audit.

SENATOR YELLOWTAIL asked for chart on the degrees of consanguinity. Andrea Merrill, Legislative Counsel, and Chip Erdman explained consanguinity and infinity.

CHAIRMAN BLAYLOCK said one of the reasons the present nepotism law was in effect was because of problems on the reservations regarding relationships, hiring, etc., The last time the committee considered this law was because problems in eastern Montana and on the reservations were brought to the attention of the committee. He said good safeguards were built into the bill but he wondered if the bill passed, could there be the same problems of fighting, dishonesty, etc.,

SENATOR STEVE BROWN said that there may be those who try to subvert the law. All you can do is give people a mechanism for blowing the whistle if it doesn't work. Thinks there are adequate safeguards built in, voting procedures, etc., Thinks bill is needed but can't give 100 percent assurance.

Closing by sponsor:

*Exhibits are the same
as those introduced in
the House.*

SENATOR GERVAIS closed, thanking committee for good hearing. *the House.*

HEARING ON 436

Presentation and Opening Statement by Sponsor:

Representative Peck, House District 15, sponsored HB 436, an act to revise the definitions and provisions related to special education of children with disabilities.

Gail Gray, OPI, presented HB 436 to committee. She referred to HB 436 as a non-controversial, non-appropriations, housekeeping bill drafted at request of the Superintendent of Schools for following reasons:

- (1) Make law consistent with language used in the Education of the Handicapped Act (federal level. It has nothing to do with the number of students identified/type of services received).
- (2) Need to comply with the Department of Education for approval of the Montana State Plan (written every two years for funding).

DATE 3-11-91

COMMITTEE ON Education

VISITORS' REGISTER

[illegible]

amount of \$6.00 (certification fee). Answer is yes.

This bill raised the certification fee from \$5.00 to \$6.00 with the total amount now going to the State Special Revenue account. It would be about \$58,000 total.

SENATOR WATERMAN said that it is their intention to set up a mentor program with this money. She said that it will help train teachers going into the classroom. This is their fee and if better teachers are needed, we must start moving toward it.

Motion and vote:

SENATOR WATERMAN moved that the amendments to HB 431 be adopted. 7 - aye; 1 - no. (Hammond) Motion carried.

SENATOR WATERMAN moved that HB 431 be concurred . Unanimous vote. Motion carried.

Senator Waterman - carrier.

EXECUTIVE ACTION ON HB 462

Discussion:

SENATOR WATERMAN said that she had asked for some information from Dorie Nielson regarding 3/20 mile limitations in this bill. She asked for postponement of voting until information was received and evaluated. Voting on HB 462 was postponed.

EXECUTIVE ACTION ON HB 347

Discussion:

Senator Yellowtail said that he knew that it was mainly Native American interests that brought this bill but he would suspect that it might be a major problem in many small and rural communities. He felt like the nepotism rule is already being abused and that HB 347 will only increase the abuse.

CHAIRMAN BLAYLOCK also expressed concern regarding the passage of HB 347. He said that Senator Yellowtail is right. Also said that he was involved in the Pryor School investigation and felt that nepotism was part of the problem there. There were a lot of people working for that school, alot of money being spent and many things going on that were unlawful. Many of their difficulties were brought about by abuse of the nepotism rule.

SENATOR NATHE said that he had seen situations in the school district that were quite intense because of the nepotism rule even though everything else was "above board and legal". He said that people tend to be nervous when school board members are related to one another and to the administrators and/or teachers.

SENATOR HAMMOND moved and withdrew motion that HB 347 be

concurring.

EXECUTIVE ACTION ON HB 436

Discussion:

SENATOR FARRELL said that there is no fiscal impact; however, there will be. It is probably the way the system should have been. What has happened is that school districts are bumping up against the caps by using special education funding. Now they are going to enforce that which they should have been doing all along in the first place; i.e., to move that increased amount out into the special education account through miscellaneous fund accounts which will allow them to project their general fund for general education. There will be some money moved around but it is the way it should have been.

Motion and vote:

SENATOR BROWN moved HB 436 to be Concurred. Unanimous. Motion carried. Senator Brown - carrier.

ADJOURNMENT

Adjournment At: 6:00 P. M.

Chet Blaylock

SENATOR CHET BLAYLOCK, Chairman

Betsy Clark

BETSY CLARK, Secretary

CB/bc

EXECUTIVE ACTION ON HB 347

Discussion by committee:

Senator Pinsoneault said that he was supportive of the bill but cautious.

Senator Hammond said that he felt that HB 347 was the strongest bill on nepotism that they had seen and had good safeguards.

Senator Yellowtail said that he understood that the rule of nepotism caused serious problems in all small communities but he said that he knows there is a possibility for abuse; that there is on-going abuse and could see trouble.

Motion and Vote:

SENATOR HAMMOND made a motion DO CONCUR in HB 347. Eight voted aye; one voted no. (Yellowtail) Motion carried.

Carrier: Senator Hammond.

ADJOURNMENT

Adjournment At: 5:00 P. M.,


SENATOR CHET BLAYLOCK, Chairman


BETSY CLARK, Secretary

CB/bc